FEB 21 1952
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

No. 604

E. O. HANDZIK,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS, ex rel., Frances Dickerson, alias Bertha Baker,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

ESTHER O. HANDZIK,
2573 Lyndale Ave.,
Chicago, Ill.,
Pro se.

UNITED STATES LAW PRINTING CO., CHICAGO 16, ILL. LAKEVIEW 5-6581

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Your petitioner, Esther O. Handzik, sued as E. O. Handzik, respectfully prays that a Writ of Certiorari issue to review the judgment and decree of the Supreme Court of Illinois entered in the above entitled case on the 27th day of November, A. D. 1951.

Opinion Below.

The opinion of the Supreme Court of Illinois is reported in ..... Ill ....., 102 N.E. 2d 340.

Jurisdiction.

The judgment and decree of the Supreme Court of Illinois was entered on November 27, 1951. The jurisdiction of this court is invoked under 28 U.S.C., Section 1257 (3). The judgment and decree of the Supreme Court of Illinois, aforesaid, affirmed the judgment of the County Court of Cook County, Illinois, sentencing petitioner, E. O. Handzik, the defendant below, to pay a fine of Five Hundred Dollars ($500.00).

The validity of Section 24 of the Medical Practice Act of the State of Illinois has been drawn in question and the Supreme Court of Illinois, by its said decision, has held said statute valid. The Federal questions sought to be reviewed were raised by Motion to Quash the Information (Abst. 7-12); by Motion for New Trial (Abst. 20-28); by Motion in Arrest of Judgment (Abst. 14-20); and by the Assignment of Errors filed in the Supreme Court of Illinois (Abst. 94-100).

All of said motions were overruled by the trial court, which rulings appear in the Abstract of Record as follows: Motion to Quash the Information denied (Abst. 12); Motion for New Trial denied (Abst. 28); and Motion in Arrest of Judgment overruled (Abst. 28).

Questions Presented.

1. Whether Section 24 of the Medical Practice Act of Illinois is unconstitutional and invalid in that it violates and infringes upon religious freedom and the rights of citizens of the United States guaranteed by the First and the Fourteenth Amendments of the Constitution of the United States?

2. Whether or not the application of Section 24 of the Medical Practice Act of Illinois to the petitioner to punish her by sentence of a fine for practicing her religion in accordance with the teachings of Jesus Christ to heal the sick by faith and prayer would make such statute void as a violation and infringement upon religious freedom and the rights of citizens of the United States guaranteed by the First and the Fourteenth Amendments of the Constitution of the United States?

3. Whether or not the provision of Section 24 of the Medical Practice Act of Illinois, providing for the punishment of *any person,* who shall attach the title "Doctor", "Physician", or any similar word or abbreviation thereof without a license from the State of Illinois, is invalid and unconstitutional insofar as is purports and attempts to deprive a person of a right to use in connection with his name any degree, title or distinction which such person may have or have received, and whether said provision, in that respect, violates and infringes upon the "due process" clause of the Fourteenth Amendment; or whether or not the application of said provision to punish the petitioner, a doctor of divinity, for using the title "Dr. E. O. Handzik, Christian Psychophysician", would make such provision of the statute void as a violation and infringement of rights guaranteed by the First and Fourteenth Amendments of the Constitution of the United States?

4. Whether or not the trial court denied to the petitioner her right to a jury trial by giving to the jury the following instruction:

> The Court instructs the jury that the information in this case alleges that the defendant did not have a license to practice the treatment of human ailments in any manner, from the State of Illinois. It is not incumbent upon the People to prove that allegation of the information; if the defendant did not have such a license, it is a matter of defense and you should not find the defendant not guilty solely by reason of the

> fact that there is no proof of evidence as to whether the defendant did or did not have such a license. (*Given.*)

and whether or not the Supreme Court of Illinois erred in refusing to hold this instruction erroneous and depriving the defendant of a fair and impartial trial by jury?

5. Whether or not the petitioner was denied her constitutional right to a trial by jury by the giving of certain instructions, peremptory in form, directing the jury to find the defendant guilty upon the jury finding certain facts charged in the information, each of which instructions completely ignored the defense of the defendant that she performed the acts in question as a part of the practice of her religion in treating human ailments by prayer or spiritual means; and whether or not the Supreme Court of Illinois erred in ignoring and refusing to consider the errors assigned in the giving of these instructions?

6. Whether or not the petitioner was denied her right, as a citizen of the United States, to be informed of the nature and cause of the accusation against her by reason of the ambiguity, uncertainty and contradictory nature of the charges contained in the information upon which she was required to stand trial and by reason of the failure of said information to negative that petitioner was one of the exempted religious class; and whether or not the Supreme Court of Illinois erred in upholding the legal sufficiency of said information?

7. Whether or not the trial court erred in refusing to receive in evidence the petitioner's Certificate of Ordination as a healing minister of the Central Baptist Church of Chicago, and in refusing to receive in evidence defendant's Diploma of graduation from the St. Luke's Baptist Theological Seminary; and whether or not the Supreme Court of Illinois erred in refusing to consider the errors assigned upon the excluding of this evidence from the jury?

8. Whether or not prejudicial and improper conduct on the part of the prosecuting attorney deprived petitioner of a fair and impartial jury trial; and whether or not the Supreme Court of Illinois erred in refusing to consider the errors assigned upon such prejudicial and improper conduct of the prosecuting attorney?

9. Whether or not the petitioner was sentenced to pay a fine for doing nothing more than to practice her religion in healing the sick by the power of prayer and faith in God?

Statute Involved.

Section 24 of the Medical Practice Act of Illinois provides as follows:

> "Section 24. If any person shall hold himself out to the public as being engaged in the diagnosis or treatment of ailments of human beings; or shall suggest, recommend or prescribe any form of treatment for the palliation, relief or cure of any physical or mental ailment of any person with the intention of receiving therefor, either directly or indirectly, any fee, gift or compensation whatsoever; or shall diagnosticate or attempt to diagnosticate, operate upon, profess to heal, prescribe for, or otherwise treat any ailment or supposed ailment, of another, or shall maintain an office for examination or treatment of persons afflicted, or alleged or supposed to be afflicted by any ailment; or shall attach the title Doctor, Physician, Surgeon, M.D., or any other word or abbreviation to his name, indicative that he is engaged in the treatment of human ailments as a business; and shall not then possess in full force and virtue a valid license issued by the authority of this State to practice the treatment of human ailments in any manner, he shall be guilty of misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by confinement in the county jail not more than one year, or by both such fine and imprisonment, in the discretion of the Court."

Section 37 of the Medical Practice Act of Illinois is involved, but the validity of Section 37 is not questioned in this petition or otherwise.

Section 37 of the Medical Practice Act of Illinois provides as follows:

> "Section 37. This Act shall not apply to dentists, pharmacists, optometrists, or other persons lawfully carrying on their particular profession or business under any valid existing Act of this State regulatory thereof, nor to persons rendering gratuitous services in cases of emergency, nor to persons treating human ailments by prayer or spiritual means as an exercise or enjoyment of religious freedom."

STATEMENT OF THE CASE.

A judgment sentencing the petitioner to pay a fine in the sum of $500.00 and costs was entered, upon the verdict of a jury, in the County Court of Cook County, Illinois, on September 21, 1950, for an alleged violation of the Medical Practice Act of Illinois.

The Information.

The Information filed against the defendant, petitioner herein contained five Counts, but there was no finding of the jury with respect to Counts 1 and 2 thereof, which are therefore disregarded.

Count 3. And the said Frances Dickerson, also known as Bertha Baker, in the name and by the authority of the People of the State of Illinois, as aforesaid, further informs the Court that the State of Illinois aforesaid, on the 15th day of November, A.D. 1949, at the City of Chicago, in said County of Cook, in the State of Illinois aforesaid, not then and there possessing in full force and virtue a valid and existing license issued by the authority of the State of Illinois to practice the treatment of human ailments in any manner, did then and there on 15th day of November, A.D. 1949, at and within the said County of Cook unlawfully suggest, recommend or prescribe a form of treatment for the palliation, relief or cure of a physical or mental ailment of a person with the intention of receiving therefor, either directly or indirectly, a fee, gift or compensation, to-wit:

> Did then and there unlawfully suggest, recommend and prescribe the loud and rapid inhaling and exhaling and the drinking of water for the relief and cure of the

supposed ailment of Frances Dickerson, also known as Bertha Baker, with the intention of receiving therefor a fee in the sum of four ($4.00) dollars.

All in violation of Section 24 of an Act to revise the law in relation to the practice of the treatment of human ailments for the better protection of the public health and to prescribe penalties for the violation thereof, and contrary to the Statutes in such case made and provided and against the peace and dignity of the People of the State of Illinois. (Abst. 3-4.)

Count 4 alleges that the defendant, on the 15th day of November, 1949, not possessing a license of the State of Illinois to practice the treatment of human ailments in any manner, did then and there "within said County of Cook unlawfully attach the title doctor, physician, surgeon, M.D., or some other word or abbreviation to *his* name indicative that *he* was engaged in the treatment of human ailments as a business, to wit: Did then and there unlawfully attach the title 'Doctor' to her name, indicative that she was engaged in the treatment of human ailments as a business, by informing patient that she was 'Dr. E. O. Handzik', all in violation of Section 24 of an Act," etc. (Abst. 4-5.)

Count 5 alleges that the defendant, on November 15, 1949, not possessing a license of the State of Illinois to practice the treatment of human ailments in any manner, did then and there "within the said County of Cook unlawfully maintain an office for examination or treatment of persons afflicted or alleged or supposed to be afflicted with any ailment, to wit: Did then and there unlawfully maintain an office for the examination and treatment of persons afflicted and supposed to be afflicted with any ailments, at 2573 Lyndale Avenue, Chicago, Illinois, all in violation of Section 24 of an Act," etc. (Abst. 5-6.)

The Evidence.

Only two witnesses testified to the facts relating to the charges of the information of violation by the defendant of Section 24 of the Medical Practice Act on November 15, 1949, namely, the prosecuting witness, Frances Dickerson, alias Bertha Baker, who was an investigator for the Department of Registration and Education, and the defendant, who testified on her own behalf.

The defendant, Esther O. Handzik, was a Divine Healer or Faith Healer. She was born in Sweden, came to this country twenty-seven years ago and was a citizen. At the time of the trial she was sixty years old, and had resided in her home at 2573 Lyndale Avenue, Chicago, Illinois, for about fourteen years. Her apartment contained only her household furniture; it was not an office. She was a healing minister, ordained by the Central Baptist Church of Chicago, and was a member of a sect which believed in and practiced divine healing or faith healing. She studied the Bible and faith healing at the St. Luke's Baptist Theological Seminary and similar study some ten years previously under a Dr. Frank Robinson, who also taught divine healing. (Abst. 59-60.)

The prosecuting witness, Mrs. Dickerson, testified that, upon an assignment to her by the Department of Registration and Education of the State of Illinois, on November 15th, 1949, in the afternoon, she went to the address at 2573 Lawndale Avenue, rang the bell, walked up to the second floor, told the woman (*i.e.* the defendant) who answered her ring, that she wanted to see "Doctor Frank Handzik". Defendant said he wasn't there and asked if she wanted a treatment; that prosecuting witness said, "Well, I guess so."; that defendant then said, "Well I am Doctor E. O. Handzik. I do the same kind of work;

come in.''; that prosecuting witness then stepped into her parlor. The witness further testified: ''She would give me a treatment; it would be a good treatment. She asked me where I had my pain; I told her between my shoulder blades. She asked me if I believed in God. I said, 'Definitely; I am of the Catholic faith.' She said that she would help me; she went on to tell me that God helps us if we believe in Him; and so on and so forth. Then she sat me down; she got a straight-back chair from her dining room. She told me she would proceed with the treatment, but first off, I would have to make a donation of $4.00 to her church, the Baptist church. She began the treatment. She put her hand on my head and she told me she would go to work first. So, she inhaled and exhaled very loudly and rapidly. Then she told me I would have to go to work. She told me to place my hands behind my back like this (indicating), palms touching. She had me inhaling very rapidly through the nostrils, about five minutes. She told me I had to get very, very warm. After about five minutes she brought a glass of water in—at least, she told me it was a glass of holy water, it had been prayed over; and she told me I would have to go to work some more, inhaling and exhaling real loud and rapidly and get very warm again; and then she brought me another glass of water. This glass of water tasted differently to the first glass. The first glass was distilled water, looked like distilled water. The second glass tasted more like a well water, stagnant well water. She poured it from some container in the adjoining room. She told me I would have to drink that. The first glass was to relieve me from pain. The second glass was to keep colds out of me, she says, for the entire winter. She told me, when I told her where the pain was, she told me I had arthritis. I said, 'Do you think it is really arthritis?' She said, 'Definitely.' She told me how she had arthritis. She couldn't lift her arms, because of the condition, from the

arthritis condition. She had taken up this work; how it had helped her. She was very sure she could help me also. I drank the second glass of water. She said it would make me feel much better and make me more beautiful. And so then she told me I would have to go to work again for a few more minutes. She told me to sit in an easy chair and she told me about this, a course whereby I could take this course from Doctor Estep and I, also, could do this type of work in my own home. I paid her the $4.00 she asked for. I used the name of Bertha Baker; I assume that as part of my investigation; our Department tells us to do that. Mrs. Handzik gave me that card, People's Exhibit 1 for identification" (*i.e.*, a card containing defendant's name and address, and the words: Christian Psychophysician's and designating certain office hours). (Abst. 36-41.)

Upon cross-examination, Mrs. Dickerson testified that the purpose of using an alias was to conceal her identity as an officer of the Department of Registration and Education; that she was sent by the Department to procure evidence against a Mr. Frank Handzik, the husband of the defendant; who was not at home. (Abst. 41-42.)

She further testified: "I told her I was sick, yes; we go to these places with a supposed ailment like a patient. I told her my supposed ailment; that I had a pain between my shoulder blades. I allowed her to understand I wanted her to give me relief. She asked me if I believe in God. She brought a glass of water and told me it was holy water. And she told me it had been prayed over, that is right. She did ask God's blessing or help, to help me in my ailment during our interview. During the latter part of the treatment she said a prayer. She put one of her hands on my stomach and one on the back and she made me fold my hands like this (indicating). 'Almighty God, I demand of you to help this woman to rid her of her ails and ills; I

demand of you, command her will; Help, help, oh Lord.' That was part of the prayer. She told me to have faith in God, and having faith in God would heal me. She told me that by breathing very rapidly and by becoming very warm, I would get nearer to God. The first glass was holy water, prayed over, then blessed. The second glass was atomic water. Yes, the second glass tasted like water—they were both poured from a container." (Abst. 42-44.)

The foregoing is substantially the entire testimony of the prosecuting witness, verbatim, omitting only repetitions or immaterial remarks.

The card introduced in evidence as People's Exhibit 1 contained petitioner's residence address, telephone number, with certain "office hours" designated, and following names and title written thus:

"DR. ESTHER O. HANDZIK
DR. FRANK A. HANDZIK

Christian Psychophysician's"

and on the reverse side of the card the following words:

"Verily, Verily I say onto you
He that believeth on me,
The works that I do shall he do also;
And greater works than these shall he do;
Because I go unto my Father . . . JESUS"

The testimony of the defendant regarding the incident and interview of November 15th, 1949, was, in substance, as follows: "I was alone in my home. She (*i.e.*, Mrs. Dickerson) rang my doorbell. She asked, 'Is Dr. Frank Handzik home?' I said, 'No, he is not home; this is Mrs. Handzik.' I never told her 'Doctor'. She come in and ask me if she could have a treatment. I says, 'I don't give no treatment; I give healing prayer; if something is wrong

with you, you shall have a healing treatment; God is know what is wrong, I do not have to know.' She told me herself she had some pain in her back, and I said, 'God will heal you perfectly, if you are a Christian, and if you believed in God.' She sit down. I says, 'I shall give you the prayer.' I tell her to put her hands back of the neck (indicating) like this, and breathe, because that is the only way we can connect God. And I told her we are all a part of God and we must know God heals us when we connect with God, and I tell her to pray. I told her the breathing exercise would help her to contact God, yes, by breathing deeply and rapidly. I would do likewise, in order to prepare myself to better contact God. Then I went, I got the consecrated water, which I prayed over, and I told her when she was through breathing, 'Will you please drink this water, which is the Holy water, consecrated water, and you shall join your will to the Will of God, and know that God shall heal you perfectly; through His divine love there is always perfect healing.' I told her that. Yes, I would pray over this water, which I called consecrated water or holy water. I prayed before I bring it. I did leave the room in order to get the water. I prayed over before and when I bring it; I pray for hours and hours before, and when the person comes and ask for the healing treatment, then I give them the water and I pray over it before I give it to the person; I pray again at the time I give the water to the person. It is pure water. You buy it in the drugstore by Hinckley & Schmitt; it is pure spring water. At the time she drank the water I prayed and asked her to join her will to the Will of God, for perfect healing of her body. I prayed all the time. I told her to join her will to the Will of God, in every cell and every part of her body because in no other way, only God's way, we cannot be healed any other way. I don't heal but God within me tells me what to do, to pray for power and healing for that person; and I know that God

hears me. I have faith in God. I believe in the power of God. I will always have results. I send prayers out to people hundreds of miles away; and I have results. And there is no other way, only God; it is the only way, when you connect God, to have a perfect healing. I don't care what sickness, have faith in God. And I wish you all would feel the power; it is wonderful. Some day you shall know I am telling the truth. That is God's work. The water was all the same; all the same water. That water I had prayed over and consecrated to God. I prayed again at the time I asked her to drink the second cup of water. When she was breathing, I was praying in silence. The water was the same identical water as the first water, yes, sir. If she thought it tasted different it must have been in herself. She knew she was doing the wrong thing. Her conscience was joined to God, and she felt the difference in her. God works in silence, and you shall know. The giving of a cup of cold water is one of the religious rites of the church, the Central Baptist Church of Chicago, in its divine healing ritual, yes, sir. The authority for that sacrament or religious rite is the words of Jesus Christ, 10:42 Matthew. I say it by memory: 'Whoever gives a glass of water in my name, anyone of my children—and we are all God's children—whoever gives a glass of water in the name of His disciple, shall by no means lose his reward.' That is in the Bible. Holy Communion is also a sacrament in our church; it is a religious rite, yes sir." (Abst. 62-65.)

Concerning the donation of $4.00, Mrs. Handzik testified: "I told her to read that little slip what we have in the book. After she got through, I said, 'You want to donate to the Church?' She says, 'We sure will; we donate to all churches; I sure will.' I say, 'How much?' She says '$4.00'. She handed me $5.00; I left the room in order to get change for a $5.00 bill, that's right. This was after the

prayer and after she had received the divine healing, yes. I did not at any time give this card, marked People's Exhibit 1, to Mrs. Dickerson. I do not know how she procured that card, because I don't use those cards. My husband had them printed. I do not use the cards; I didn't give her anything. When I returned after she left, I found the donation slip she signed was gone, that is right, behind my back, yes, she do." (Abst. 65-66.)

Mrs. Handzik further testified: "I did not diagnose anything. I said, 'God will know; we don't have to know that; God make our body; when we pray to God, we know what to do; we shall be well.' I did not make any physical examination of this lady. I said, 'God bless you and be with you always. And if you are sick, God will always help you if you ask him to. And if you are not sick,' I says, 'God will know what you done. I do not do no healing. God knows our thoughts and our acts. But God bless you.' And after she left I sat down and prayed because I found out she got my book and certificate. I prayed God would forgive her and God would know she did wrong. God knows I am telling everything true. God alone knows. I gave the donations to the Central Baptist Church, all of it, and more too; every penny. I did not retain any part of that particular donation for myself, not a penny. I work every day for my living; I am a tailor. I do not support myself by divine healing. I could never do that. The kind of work I do is pants making, pants for uniforms and suits for men; I am a corner maker. When I work full time, I work Monday to Friday, five days a week. I have worked seventeen or eighteen years with the same employer." (Abst. 66-68.)

Specification of Errors to be Urged.

1. Section 24 of the Medical Practice Act of Illinois is unconstitutional and invalid in that it violates and infringes

upon religious freedom and the rights of citizens of the United States guaranteed by the First and the Fourteenth Amendments of the Constitution of the United States.

2. The application of Section 24 of said Medical Practice Act to the petitioner to punish her by sentence of a fine for practicing her religion in accordance with the teachings of Jesus Christ to heal the sick by faith and prayer would make such statute void as a violation and infringement upon religious freedom and the rights of citizens of the United States guaranteed by the First and the Fourteenth Amendments of the Constitution of the United States.

3. The provision of Section 24 of said Medical Practice Act providing for the punishment of *any person,* who shall attach the title "Doctor", "Physician", or any similar word or abbreviation thereof, without a license from the State of Illinois, is unconstitutional and invalid in that it violates and infringes upon the "due process" clause of the Fourteenth Amendment; and, specifically, the application of said provision to punish the petitioner, a doctor of divinity, for using the title "Dr. E. O. Handzik, Christian Psychophysician", would make such provision of the statute unconstitutional and void as a violation and infringement of rights guaranteed by the First and Fourteenth Amendments of the Constitution of the United States.

4. The petitioner was denied her right to a trial by an impartial jury by an instruction given by the Court to the jury to the effect that the State did not have to prove one of the essential allegations of the Information against her. The essential allegation of the information that defendant did not have a license as required by Section 24 of said Act was not proved at any time.

5. The petitioner was denied her constitutional right to

a trial by jury by the giving of certain instructions, peremptory in form, directing the jury to find the defendant guilty, upon the jury finding certain facts charged in the information, each of which instructions completely ignored the defense of the defendant that she performed the acts in question as a part of the practice of her religion in treating human ailments by prayer or spiritual means.

6. The petitioner was denied her right, as a citizen of the United States, to be informed of the nature and cause of the accusation against her, by reason of the ambiguity and insufficiency of the charges contained in the information against her.

7. The Court erred in refusing to receive in evidence the petitioner's Certificate of Ordination as a healing minister of the Central Baptist Church of Chicago and petitioner's Diploma of graduation from the St. Luke's Theological Seminary.

8. Prejudicial and improper conduct on the part of the prosecuting attorney deprived petitioner of a fair and impartial trial by jury.

9. Petitioner was unjustly sentenced to pay a fine for doing nothing more than to practice her religion in healing the sick by the power of prayer and faith in God.

Reasons for Granting the Writ.

May It Please the Court:

This writ of error proceedings concerns the most cherished rights of an American citizen: freedom to worship and practice religion according to her devout religious beliefs; the right of the accused to be informed of the specific charge against her; and her right to a fair and impartial trial by jury. These rights, we believe, were substantially violated in the case at bar.

The Bible, and, particularly, the New Testament, is the foundation and genesis for all Christian religion and for every Christian church or denomination thereof. It is there for all to read and understand according to his own light, experience and understanding. It is a well known fact that different persons and divers groups and sects interpret and understand certain passages of the New Testament in different ways and meanings and practice their religious tenets accordingly. Our Constitutions, both Federal and State, and our laws not only permit this, but encourage and protect the utmost freedom in religious beliefs and practices. We believe that it is right and good that this should be so.

Jesus Christ commanded his disciples to heal the sick, saying unto them: "Heal the sick, cleanse the lepers, raise the dead, cast out devils: freely ye have received, freely give." MATTHEW 10:8.

Again, Jesus said: "Verily, verily, I say unto you, He that believeth on me, the works that I do shall he do also; and greater works than these shall he do; because I go unto my Father. And whatsoever ye shall ask in my name, that will I do, that the Father may be glorified in the Son. If ye shall ask any thing in my name, I will do it. If ye love me, keep my commandments." JOHN 14:12-15.

The petitioner, Mrs. Handzik, believed, as many others do, that she should heal the sick, as Christ Himself commanded, and she devoutly believed that through faith in God and prayer the sick could be healed. Is it unlawful to follow the teachings of Jesus Christ? The Court, by its judgment, has pronounced it unlawful, though the judgment flies in the face of Section 37 of the Medical Practice Act which states that the Act "shall not apply * * * to persons treating human ailments by prayer or spiritual

means as an exercise or enjoyment of religious freedom." and though the judgment of the Court violates the most cherished rights of American citizens, guaranteed by both the State and Federal Constitutions.

The Supreme Court of Illinois, in its opinion, acknowledged that constitutional questions were properly raised and preserved for review as to the validity and constitutionality of Section 24 of the Illinois Medical Practice Act and as to the alleged infringement or violation of petitioner's rights as an American citizen.

Questions involving the validity, construction and constitutionality of the Medical Practice Act of Illinois, and, particularly, of Section 24 of said Act, have been raised by the defendant, first by motion to quash the information, then by motion in arrest of judgment and by the assignment of errors filed herein.

Section 24 conflicts with Section 37 of said Act. It purports to provide punishment for any person, including persons exempted under Section 37, for doing any act enumerated in said Section 24. It contains no exceptions or exemption of "persons treating human ailments by prayer or spiritual means as an exercise or enjoyment of religious freedom" as provided in Section 37.

Section 24 violates and infringes upon religious freedom and the rights of citizens of the United States guaranteed by the First and the Fourteenth Amendments of the Federal Constitution, and by Section 2 of Article IV thereof, and guaranteed by Section 3 of Article II of the State Constitution as well.

Faith healing, divine healing and prayer for the sick, whether physically or mentally ill, all appear to be punishable under Section 24. No exceptions are recognized in the Section itself.

The provision, also, of Section 24, providing for the punishment of *any person*, who shall attach the title "Doctor", "Physician", or any other word or abbreviation to his name, indicative that he is engaged in the treatment of human ailments, unless such person shall have a license issued by the authority of the state to practice the treatment of human ailments, purports to prohibit a minister, or other person who has received a doctor's degree from some seminary, school or institution of learning, from using or attaching his title or degree to his name. It is contended that this is a violation of the due process clause of the Federal Constitution and constitutes an abridgement of the privileges of citizens of the United States. (Sec. 2, Art. 4, Constitution of the United States, 5th and 14th Amendments, Constitution of the United States.)

The Supreme Court of Illinois, in its opinion herein, upholds the constitutionality of Section 24 of the Illinois Medical Practice Act with the statement: "As heretofore pointed out, section 24 must be read in conjunction with section 37, and that section specifically exempts 'persons treating human ailments by prayer or spiritual means as an exercise or enjoyment of religious freedom.'"

However, Section 24, within itself, is a complete statute providing its own penalty for a violation of the section, without condition, or limitation, or reference to Section 37; and it was presented *verbatim* in the instrucitons to the jury. (Abst. 84.) Moreover, the trial court gave to the jury certain instructions, peremptory in form, instructing the jury to find the defendant guilty under separate counts of the information, in each case without regard to the statutory exemption provided by Section 37 of the Act and without any reference being made to the defendant's theory of defense. (Abst. 85-86.)

The Court's instructions to the Jury deprived petitioner of her right to trial by jury.

Instruction No. 7, given to the jury on behalf of the State, was as follows:

7.

> The Court instructs the jury that the information in this case alleges that the defendant did not have a license to practice the treatments of human ailments in any manner, from the State of Illinois. It is not incumbent upon the People to prove that allegation of the information; if the defendant did not have such a license, it is a matter of defense and you should not find the defendant not guilty solely by reason of the fact that there is no proof of evidence as to whether the defendant did or did not have such a license. (GIVEN.)

This instruction is highly erroneous, in our opinion, and deprived the petitioner not only of an impartial jury trial, but even of a trial under principles of American jurisprudence, the defendant being considered guilty without proof. Moreover, the instruction excludes the jury from a determination that the defendant, under Section 37 of the Illinois Medical Practice Act, had a license or privilege to treat human ailments "by prayer or spiritual means as an exercise or enjoyment of religious freedom."

There was no evidence whatever, offered or received, that the defendant did not have a license from the State, and it cannot be said therefore that the error of the instruction was cured by proof having been made of that allegation on the trial. It is one of the oldest principles of American jurisprudence that the burden is upon the State to prove every essential averment of its charge against the defendant, and that there is no burden upon the defendant to

disprove an averment of the indictment or information or even to prove a defense—for he may stand mute.

The instruction, though somewhat garbled and confused, definitely states that it is not incumbent upon the People to prove the allegation that the defendant did not have a license from the State, and, further, that the jury should not find the defendant not guilty by reason of the fact that there is no proof of evidence as to whether the defendant did or did not have such a license. This instruction violates fundamental principles of criminal law and violates the constitutional rights of the defendant to due process of law. (5th Amendment, Constitution of the United States.)

Instructions Nos. 10, 11, 12 and 13 given at the request of the State, were peremptory instructions, directing the jury to find the defendant guilty, under the respective counts of the information upon finding certain facts.

Instruction No. 11, given at the request of the State, was as follows:

11.

The Court instructs the jury that if you find from all of the evidence and beyond a reasonable doubt that Esther O. Handzik, the defendant, did on November 15, 1949, unlawfully suggest, recommend and prescribe breathing exercises and water for the supposed arthritis of Frances Dickerson, also known as Bertha Baker, with the intention of receiving therefor a fee in the sum of Four ($4.00) Dollars, then you should find the defendant, Esther O. Handzik, guilty as to Count Three. (Given.)

The above instruction was one of four peremptory instructions given by the Court to the jury at the request of the State, which directed the jury to find the defendant "Guilty" without stating defendant's theory of defense and without making any reference to the provisions of Sec-

tion 37 of the Medical Practice Act, or its application to the defendant. This instruction completely ignores material issues in the case and essential facts bearing upon the defendant's defense.

It does not even require the jury to find as a fact one of the essential requirements of Section 24 of the Act, namely, that at the time in question the defendant did not "then possess in full force and virtue a valid license issued by the authority of this State;" nor does it require the jury to find as a fact that the defendant did suggest, recommend or prescribe a "form of treatment for the palliation, relief or cure of a physical or mental ailment" of a person. The matter of recommending or prescribing "treatment for the palliation, relief or cure" of an ailment is entirely omitted from the instruction. It is not unlawful, even under Section 24, for one person to suggest to another breathing exercises and water (either for internal or external use) if they are not suggested as a cure or remedy for an ailment. A physical education instuctor may well and lawfully, for a fee, instruct another person in breathing and setting up exercises for the development of the body, without "treating" any ailment and without being considered in violation of Section 24 of the Act. The words "treatment for the palliation, relief or cure of any physical or mental ailment" are the vital words of Section 24, which are entirely left out of this instruction. It should be noticed here that the evidence both of the prosecuting witness and of the defendant was to the effect that the breathing exercise and the drinking of the Holy water were for the purpose merely of "better contacting God" and to join the will of the seeker of God's help to the Will of God and was done in conjunction with prayer for Divine healing.

If Section 37 of the Act was to afford any protection or defense for the defendant, as provided by law, then it was

necessary that this Section of the Statute and this theory of defense be covered in some way in such an instruction as this, which concludes with a direction of a verdict of "guilty."

This instruction practically told the jury to find the defendant guilty upon the facts stated, inasmuch as water, albeit Holy water, was given to Mrs. Dickerson, and she did breathe. The fact that Mrs. Handzik told Mrs. Dickerson that only God could heal her supposed ailment and that Mrs. Handzik prayed for her is excluded from the consideration of the jury by the instruction.

Instruction No. 12 was also peremptory in form and was as follows:

12.

The Court instructs the jury that if you find from all of the evidence and beyond a reasonable doubt that Esther O. Handzik, the defendant, did on November 15, A. D. 1949, unlawfully attach the title "Doctor" to her name, indicative that she was engaged in the treatment of human ailments as a business by advising Frances Dickerson, also known as Bertha Baker, that she was Doctor E. O. Handzik, then you will find the defendant guilty as to Count 4. (GIVEN.)

This instruction was erroneous and improper because it ignored essential facts and matters of defense and invaded the province of the jury and directed a verdict finding the defendant "Guilty" without stating defendant's theory of defense and without making any reference to the provisions of Section 37 of the Medical Practice Act, or its application to the defendant. It also failed to require the State to prove or the jury to find as a fact that the defendant did not "then possess * * * a valid license issued by the authority of this State," which was a vital averment of the Information.

The instruction grossly invades the province of the jury by instructing the jury that "by advising Frances Dickerson, also known as Bertha Baker, that she was Doctor E. O. Handzik," the defendant, without other proof being made, was guilty of "unlawfully attaching the title 'Doctor' to her name" and that such statement alone was "indicative that she was engaged in the treatment of human ailments as a business" and that the jury should find the defendant guilty as to Count 4. This instruction was bound to mislead the jury and make the jury believe that they were required by the order of the Court to find the defendant guilty as to Count 4.

Instruction No. 13 was also a peremptory instruction, directing a finding of guilty as to Count Five, and was as follows:

13.

The Court instructs the jury that if you find from all of the evidence and beyond a reasonable doubt that Esther O. Handzik, the defendant, did on November 15, 1949, unlawfully maintain an office at 2573 Lyndale Avenue, Chicago, Illinois, for the examination and treatment of Frances Dickerson, also known as Bertha Baker, then you should find the defendant, Esther O. Handzik, guilty as to Count Five. (GIVEN.)

This instruction also was erroneous and improper because it ignored essential facts and matters of defense and invaded the province of the jury, directing a finding of guilty without stating defendant's theory of defense and without making any reference to the provisions of Section 37 of the Medical Practice Act, or its application to the defendant. Likewise, it failed to require the State to prove, or the jury to find as a fact, that the defendant did not "then possess * * * a valid license issued by the authority of this State", which was a necessary averment of the Information as well as a necessary element of the proof.

The instruction does not even require proof of the offense stated in the Statute, namely, that the accused, without possessing a valid license, did "maintain an office for examination or treatment of persons afflicted or alleged or supposed to be afflicted by any ailment." The instruction only required that the jury find that "Esther O. Handzik, the defendant, did on November 15, 1949, unlawfully maintain an office at 2573 Lyndale Avenue, Chicago, Illinois, for the examination and treatment of Frances Dickerson, also known as Bertha Baker." Neither medical examiation or medical treatment of Frances Dickerson is specified in the instruction, nor even treatment of any ailment or supposed aiment of Frances Dickerson is specified or required in the instruction. To receive and entertain "Frances Dickerson" in defendant's home at 2573 Lyndale Avenue, which is substantially all that the instruction requires the jury to find, is not equivalent to maintaining "an office for examination or treatment of persons afflicted or alleged or supposed to be afflicted by any ailment." Such interpretation of the statute was never intended, yet the zeal of the prosecution for a conviction in this case impelled them to ride rough shod not only over the rights of the defendant, but over the explicit language of the statute on which the prosecution is based.

The foregoing peremptory instructions, each directing a verdict of "Guilty" upon a particular Count of the Information, constituted reversible error.

It is reversible error, in instructing a jury, to ignore a material issue. (*Costly* v. *McGowan*, 174 Ill. 76; *Rigdon* v. *Crosby*, 328 Ill. App. 399.)

Where an instruction is peremptory in form, an error in the instruction cannot be cured by any other instruction given. (*Daubach* v. *Drake Hotel Co.*, 243 Ill. App. 298, 309.)

Where an instruction directs a verdict, a failure to include all the essential facts is fatal and cannot be cured by other instructions in the case. (*Gage* v. *City of Vienna*, 196 Ill. App. 586.)

An instruction which invades the province of the jury should not be given. (*Coukoulis* v. *Schwartz*, 297 Ill. App. 377.)

Each of the instructions complained of directed a verdict of "Guilty" upon the jury finding certain facts, but ignored the defense of the defendant based upon Section 37 which exempted her from the provisions of Section 24 of the Medical Practice Act and ignored the provisions of the State and Federal Constitutions providing for the free exercise and enjoyment of religious profession and worship. Indeed, the Court should have enforced these constitutional guarantees and the explicit provision of Section 37 of the Act by directing a verdict of "Not Guilty" instead of "Guilty." (1st Amendment, U. S. Constitution; Sec. 3, Art. II, Ill. Constitution.)

An instruction directing a verdict for plaintiff is erroneous if it ignores a matter of defense which there is evidence fairly tending to prove. (*Mooney* v. *City of Chicago*, 239 Ill. 414.)

In commenting upon an instruction of similar character to those in the case at bar, in the case of *Coukoulis* v. *Schwartz*, 297 Ill. App. 377, the Court said:

> "This instruction should not have been given. It invades the province of the jury by telling them what acts constitute due care; it is peremptory in its nature without reciting important facts and circumstances which might be controlling in the case. It singles out and gives undue prominence to the testimony of one witness, and virtually tells the jury if they find these facts from the testimony of the one witness they would be warranted in finding the defendant not guilty. Such instructions have been condemned over and over."

Instruction No. 4, given to the jury at the request of the State, and objected to by defendant, was as follows:

4.

The Court instructs the jury that the right to diagnose ailments or supposed ailments, or to prescribe therefor, or to suggest, recommend and prescribe a form of treatment for the relief or cure of a physical ailment of a person with the intention of receiving therefor a fee in cash; or to attach the title Doctor, Physician, or some other title or abbreviation to one's name indicative that one is engaged in the treatment of human ailments as a business, or the right to maintain an office for the treatment and examination of persons afflicted or supposed to be afflicted with any ailment, is a right regulated by the laws of the State of Illinois, and is within the police powers of the State. (GIVEN.)

The objection to this instruction is that it is misleading and it tells the jury that all matters described in the instruction are regulated by the laws of the State and are within the police powers of the State, whereas, in truth and in fact, Section 37 of the statute obviously referred to in the instruction (*i.e.*, the Medical Practice Act) expressly provides that "This Act shall not apply * * * to persons treating human ailments by prayer or spiritual means as an exercise or enjoyment of religious freedom", which fact is completey ignored in the instruction. We cannot concede either, and it is surely not the law of our land that the State can regulate or prohibit "the free exercise and enjoyment of religious profession and worship." (Sec. 3, Art. 2, Constitution of Illinois; 1st and 14th Amendments, Constitution of the United States.) Divine healing, or treating human ailments by prayer or spiritual means as an exercise or enjoyment of religious freedom is permitted and expressly exempted from the regulations of the Act. (Sec. 37, Medical Practice Act.) This being so, the instruction is unfair, improper and

highly erroneous, particularly so, when the defense was based upon Section 37 and the constitutional guarantees with respect to religious freedom. The whole effort of the prosecution in the case at bar was to escape from or minimize the exemption of the defendant by law from prosecution for giving a Divine Healing treatment by prayer and spiritual means.

The judgment is not supported by any evidence that the defendant did not have a license, which is a requirement of proof under Section 24 of the Medical Practice Act of Illinois.

The Fourteenth Amendment of the Constitution of the United States provides, in Section 1, that

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

When the Court held as it did in the case at bar, when it overruled defendant's motions for a directed verdict of not guilty, when it gave Instruction No. 7 to the jury, and when it overruled defendant's motions for a new trial and in arrest of judgment, it abridged the privileges and immunities of the defendant as a citizen of the United States, it deprived her of her rights and property without due process of law, and denied to her the equal protection of the laws. It violated this provision of the Federal Constitution.

The trial and conviction of the defendant was not in accordance with the Statute or with the course of the common law because proof was not made, nor required by the Court, that the defendant did not have a license from the State as required by Section 24 of the Medical Practice Act.

Paragraph 736, Smith-Hurd Illinois Statutes, Chapter 38, Criminal Code, provides that

> "All trials for criminal offenses shall be by jury and conducted according to the course of the common law, except when this Act points out a different mode, and the rules of evidence of the common law shall also be binding upon all courts and juries in criminal cases, except as provided by law; provided, that in any case where the defendant pleads guilty or waives a jury, the cause shall be heard and determined by the court without a jury."

American jurisprudence and the common law of this country and of England have always required that the prosecution must prove every essential averment of the indictment or information against the defendant, and have maintained that there is no burden upon the defendant to prove a defense or to disprove any averments of the charge against him, and he may stand mute and go hence if the State fails to prove any essential elements of the offense charged. That the accused did not possess a valid license from the State is made by the statute an essential element of the offenses charged in Section 24 of the Medical Practice Act.

The information, and, particularly, Counts 3, 4 and 5 thereof, were legally insufficient to charge a crime or offense against the State of Illinois, and were insufficient to inform the defendant of the nature and cause of the accusation of alleged violation of law. The Court erred in overruling defendant's motion to quash the information and further erred in overruling defendant's motion in arrest of judgment.

Each of the Counts of the Information is uncertain, indefinite and legally insufficient, in that each contains alternative charges and fails to charge the defendant with

a specific overt act and fails to inform the defendant of the specific charge against her.

The same certainty of allegation is required in an information as in an indictment. *People* v. *Weinstein,* 255 Ill. 530.

An indictment or information which does not state with sufficient certainty the facts necessary to constitute the offense charged, will not support a conviction. *People* v. *Picard,* 284 Ill. 588.

One of the rules for indictments which cannot be disregarded is that there must be the highest degree of certainty as to their meaning, and the court in construing an indictment cannot depart from the words of the indictment and speculate as to the possible intention of the writer. *People* v. *Hallberg,* 259 Ill. 502.

In *People* v. *Jackson,* 181 Ill. App. 713, the Court held that an information charging that defendant at a certain time and place "unlawfully caused, induced, persuaded or encouraged" the named female to become an inmate of a house of prostitution was uncertain and vulnerable to attack upon motion to quash because of the use of the disjunctiv "or".

In *People* v. *Fore,* 384 Ill. 455, the Court said:

> "As pertinently observed in *People* v. *Powell,* 353 Ill. 582, 'The highest degree of certainty in pleading is required in indictments. The court, in construing an indictment, is not at liberty to depart from the words of the indictment itself and speculate as to the possible intention of the writer of the indictment nor to supply matters of substance which have been omitted."

In *People* v. *Flynn,* 375 Ill. 366, the Court said:

> "We cannot agree with the People's contention that the motion to quash should have been overruled be-

cause the various counts of the indictment were in the words of the statute. The rule applicable is stated in *People* v. *Brown,* 336 Ill. 257, 258. Section 9 of article 2 of our Constitution, Smith-Hurd Stats., provides that in a criminal prosecution the defendant shall have the right to demand the nature and cause of the accusation against him. This was intended to give the accused such specific designation of the offense as will enable him to prepare his defense and to plead the judgment in bar of a subsequent prosecution for the same offense."

In the case of *Evans* v. *United States,* 153 U. S. 584, quoted with approval in *People* v. *Green,* 368 Ill. 242, the United States Supreme Court said:

> "Even in the cases of misdemeanors, the indictment must be free from all ambiguity, and leave no doubt in the minds of the accused and the court of the exact offense intended to be charged, not only that the former may know what he is called upon to meet, but that, upon a plea of former acquittal or conviction, the record may show with accuracy the exact offense to which the plea relates."

Count 3 of the Information in the case at bar alleges that on the 15th day of November, A.D. 1949, the defendant did one or another of a series of acts, *viz.,* that the defendant did then and there

> "unlawfully suggest, recommend or prescribe a form of treatment for the palliation, relief or cure of a physical or mental ailment of a person with the intention of receiving therefor either directly or indirectly, a fee, gift or compensation * * *"

Count 4 of the Information in the case at bar alleges that on the 15th day of November, A. D. 1949, the defendant, not then and there possessing a license of the State to practice the treatment of human ailments, did then and there

> "unlawfully attach the title Doctor, Physician, M.D. or some other word or abbreviation to *his* name indicative that *he* was engaged in the treatment of human ailments as a business * * *" (Italics supplied.)

In addition to the uncertainty, indefiniteness and alternative nature of this charge, we wish to point out that the Count contains contradictory statements and actually charges that the defendant did attach the title "Doctor", or some other title, to the name of another person namely, an undisclosed male person, indicative that such male person was engaged in the treatment of human ailments, which, if true, was not an offense even under the language of Section 24 of the Medical Practice Act.

Count 5 of the Information charges that on the 15th day of November, A. D. 1949, the defendant, not then and there possessing a license of the State to practice the treatment of human ailments, did then and there

> "unlawfully maintain an office for examination or treatment of persons afflicted or alleged or supposed to be afflicted with any ailment, to wit: Did then and there unlawfully maintain an office for the examination and treatment of persons afflicted and supposed to be afflicted with any ailments, at 2573 Lyndale Avenue, Chicago, Illinois."

It will be noted that Count 5 fails to state what act or acts the defendant performed or intended to perform in the alleged office, and it is not even alleged that the defendant maintained said alleged office for any medical examination whatever or any medical treatment whatsoever. Certainly, if the place, or the alleged office, was maintained for "treating human ailments by prayer or spiritual means" (which is expressly exempted by Section 37 of the Medical Practice Act), no offense is, or could be charged in this count. If such a charge were sufficient, then every Christian church, Catholic, Protestant and Christian Science, and every place of prayer for healing of the sick, would be in violation of Section 24 of the Medical Practice Act. We sincerely believe and maintain that the spiritual power is a more

potent force for healing a man's bodily and mental ills than medicine or medical treatment. Even medical doctors will admit that spiritual power and religious faith have produced healing and cures of cases which doctors were unable to produce with medicines or surgery.

In *People* v. *Jiras*, 260 Ill. App. 142, the Court held that an indictment charging that the accused maintained an office for examination and treatment of persons afflicted and alleged to be afflicted by human ailments, without possessing a valid license, was quashable for failure to state what acts the accused performed or intended to perform as constituting practice of a system or method of treating human ailments.

In *People* v. *Wirth*, 266 Ill. App. 231, the information charged, in the language of the statute, that the defendant did "maintain an office for examination or treatment of persons afflicted, or alleged or supposed to be afflicted by any ailment", and the Court, in holding the information insufficient to support a conviction, said, at page 233:

> "A motion was made in the court below to quash this count because it is indefinite, uncertain, misleading and defective and not fairly apprising the defendant of the offense attempted to be charged. In the case of *People* v. *Jiras*, 260 Ill. App. 142, the count on which the defendant was convicted was substantially in the same words as that in the case at bar and a full discussion of the sufficiency of such a count was had, and we held that the reasoning applied in the case of *People* v. *Brown*, 336 Ill. 257, must be applied to a count of that character involved in this case. We there held: 'In neither case does the indictment state or charge what act or acts was performed or intended to be performed as constituting the practice of a system or method of treating human ailments. The indictment in this case contains the same defect as that contained in *People* v. *Brown*, *supra*, and the motion to quash should have been sustained."

In none of the counts of the information in the case at bar was it alleged that the defendant *was not* a person exempted or covered by the provisions of Section 37 of the Medical Practice Act exempting certain persons from the provisions and penalties of the Act, and by failure to negative the exemption of the defendant under Section 37, we maintain that each count of the information was fatally defective. Our case is not a case where the defendant is charged with doing a specific medical act, such as surgery or the prescribing of drugs. It was particularly necessary in the case at bar for the information at least to allege that the defendant was not a person "treating human ailments by prayer or spiritual means as an exercise or enjoyment of religious freedom" with respect to whom the Statute itself (*i. e.*, Section 37) expressly provided that the Act should not apply. Our citizens are entitled of right to some protection against molestation and charges in cases where the Statute expressly so provides.

Where an act is not in itself unlawful but becomes so by its circumstances, all the matters necessary to show its illegality must be stated in the indictment or information. It is not sufficient to charge an offense in the language of the statute, alone, where by its generality it may embrace acts which it was not the intent of the statute to punish. Such facts must be alleged that, if proved, the defendant cannot be innocent. *People* v. *Barnes*, 314 Ill. 140, at page 145; 31 Corpus Juris p. 713.

Each of the said Counts in the case at bar fails to state facts sufficient to constitute a crime or offense against the State of Illinois; and each of said counts is insufficient to inform the defendant of the nature and cause of the accusation of alleged violation of the statutory law of the State of Illinois. The constitutional rights of the

defendant to be informed of the nature and cause of the accusation were denied to her. (Section 9, Article 2, Constitution of Illinois; 6th Amendment, Constitution of the United States.) Her motion to quash the information was erroneously overruled.

In *People* v. *Green,* 368 Ill. 242, the Court said:

> "The defendant claimed the benefit and protection of section 9 of article 2 of the Constitution, entitling him to know the nature and cause of the offense laid to his charge, and his right to demand this benefit of the bill of rights is no empty technicality, but a substantial provision that may not be ignored."

The refusal of the trial court to receive in evidence petitioner's Certificate of Ordination as a Healing Minister of the Central Baptist Church of Chicago (Def. Exhibit 1 id.) and petitioner's Diploma of graduation from the St. Luke's Baptist Theological Seminary (Def. Exhibit 2 id.) deprived petitioner of her right to an impartial trial by jury.

The exhibits, a Certificate of Ordination and License, ordaining the defendant as a Divine Healer, Christian Psychophysician and Minister of the Gospel of Jesus Christ, and her Diploma, granting her the degree of Doctor of Divinity as a graduate of the St. Luke's Baptist Theological Seminary, are set out on pages 76 and 77 of the Abstract of Record herein.

The Court sustained the objection of the State's attorney to the admission of these exhbiits in evidence (Abst. 78-79).

The exhibits were material and relevant to the defendant's defense and their exclusion from the jury by the Court prejudiced the jury against the defendant.

Petitioner's right, under the Sixth Amendment of the Federal Constitution, to trial by an impartial jury of the State was thereby denied.

Prejudicial and improper conduct on the part of the prosecuting attorney deprived petitioner of a fair and impartial jury trial and required that the Court should have granted the motion for a mistrial thrice made by petitioner's counsel. The Court erred in denying said motions.

During the examination of prospective jurors for the trial of the case at bar, the prosecutor, Mr. Stachnik, made the statement:

> "She is not exempted because of the church and it does not exempt the responsibility of violating the Act. If she does acts in addition to prayer, she is in violation of the act." (Abst. 30; Rec. 90.)

Following this statement, we quote the following excerpts from the record:

> Mr. Bertram: I object to counsel's statement. It is not the law. The law says it shall not apply to persons treating human ailments by prayer or as a part of the practice of their religion.
>
> Mr. Stachnik: The fact she belonged to any such church does not exempt her. If she did acts beyond spiritual and faith healing, she is still in violation of the Act.
>
> The Court: That's right.
>
> Mr. Bertram: I object to that and I call the Court's attention to the error.
>
> The Court: Objection overruled. (Abst. 30; Rec. 90.)
>
> Mr. Stachnik: Q. You understand the defendant is charged with five separate and distinct criminal offenses, five separate, distinct acts. It is the duty of the State to prove the charges beyond a reasonable doubt. If such proof is made, you won't hesitate to find the defendant guilty?

Mr. Bertram: I object.

Mr. Stachnik: It has been ruled on.

The Court: Overruled, overruled.

Mr. Bertram: I object. It is error. The State is also required to prove that the Medical Practice Act applies to the defendant in this case.

The Court: Objection overruled.

Mr. Bertram: And I make an objection to the statement that the exemption of the Statute does not apply to the defendant, to exempt her from the provisions of the Act.

The Court: Objection overruled.

Mr. Bertram: At this time I want to make a motion for a mistrial on the ground of error.

The Court: Motion denied. (Abst. 31-32; Rec. 115.)

Mr. Stachnik: Q. In this case you will render a verdict based upon the law and the evidence. And if the State proves their charges, and makes such proof beyond a reasonable doubt, you won't hesitate to find the defendant guilty?

Juror: A. No.

Mr. Bertram: I object to it, your Honor.

The Court: Objection overruled.

Whereupon the following proceedings were had outside of the presence of the jury:

Mr. Bertram: Your Honor, I want to make an objection. I want to make most serious objection to the attitude of the Court in the voice, tone of voice, and the demeanor of the Court in overruling my objections. I cannot help but feel that the jury has been given the impression that your Honor is prejudiced against me or against my client; and I think that your Honor has exhibited irritation and hostility; and I do not believe that we can get a fair trial from your Honor.

The Court: Well, just a minute. There have been numerous objections and interruptions in the case so far. The Court has endeavored to promptly rule upon the objections. I don't think there has been any remark made, or anything here, that would cause any prejudice whatsoever.

Mr. Bertram: By the tone of your Honor's voice.
Mr. Stachnik: I think Counsel is imagining things.
The Court: Motion denied.
• • •
Mr. Bertram: I ask for a mistrial and transfer of the trial to another Judge.
The Court: Motion will be denied. (Abst. 33-34; Rec. 121-125.)

During the direct examination of the State's witness by the prosecuting attorney, Mr. Stachnik, the following further proceedings occurred in the presence of the jury:

Mr. Stachnik: Q. Do you know Doctor William Estep?
The Witness: A. Yes, I met him once.
Mr. Bertram: I move to strike the answer.
The Court: It will be stricken.
Mr. Stachnik: Your Honor, we intend to show this is one conspiracy defendant is associated with.
Mr. Bertram: We are not on trial for conspiracy here; anything but.
Mr. Stachnik: We are charging the defendant is violating the Medical Practice Act due to Doctor Estep's—
Mr. Bertram: I think that is error for Counsel to make that statement in the presence of the jury.
The Court: Sustained. (Abst. 39, Rec. 153.)

During the direct examination of another State's witness, Ethel Tarpey, by the prosecuting attorney, the following occurred in the presence of the jury:

Mr. Stachnik: It was holy water at the time Estep got into trouble.
Mr. Bertram: It was holy water on November 15, 1949.
The Court: Proceed.
The Witness: It was never holy water in my time.
Mr. Bertram: I move to strike the remark of the witness and I make a motion for a mistrial here.
The Court: The answer will be stricken and the jury instructed to disregard it. • • • Motion denied. (Abst. 49-50, Rec. 184-185.)

We strongly believe that the foregoing proceedings prejudiced the case of the defendant with the jury and that the Court erred in refusing to grant defendant's several motions for a mistrial.

A defendant charged with crime has a right to a fair and impartial trial according to law. The State's attorney is a sworn officer of the Court, and it is his official duty to see that the defendant has such fair and impartial trial. (*People* v. *Bimbo*, 314 Ill. 449, p. 454; *People* v. *Black*, 367 Ill. 209; *People* v. *Stanko*, 402 Ill. 558.)

In *People* v. *Black*, 367 Ill. 209, the Court said:

> "The defendant is never required to defend himself against some unrelated offense, accusation, or prejudicial insinuation not pertinent to the crime for which he is on trial. * * * The position of state's attorney imposes on that official the obligation to see that every defendant has a just trial. It is the established law of this state that the state's attorney shall treat the defendant fairly in his argument as well as produce only competent evidence during the trial."

All of the evidence, not only of the defendant, but of the prosecution, shows that our case is essentially and wholly a case of faith healing by a person "treating human ailments by prayer or spiritual means as an exercise or enjoyment of religious freedom", protected not only by the State and Federal Constitutions, but by the express provisions of Section 37 of the Medical Practice Act and therefore exempted from the licensing requirements of said Act.

In our Statement of the Case, under the heading "The Evidence", we have faithfully set out all of the evidence offered by the State to prove a case against the defendant, as well as facts brought out by the evidence of the defendant.

We rely upon the protection intended to be given to every citizen of this country by the First, Fifth, Sixth and Fourteenth Amendments of the Constitution of the United States; and Section 2, Article 4 of the Constitution of the United States.

The Court erred in overruling defendant's motion for a directed verdict and for a new trial.

In the case of *People* v. *Klinger*, 292 Ill. App. 321, the Appellate Court of Illinois, First District, reversed a judgment of conviction of violation of Section 24 of the Medical Practice Act, where the evidence was similar to that in the case at bar. The Court said, in its opinion:

> "The evidence in this case clearly shows that defendant's method of curing was by prayer; that defendant was a duly authorized member of the First Spiritualist Church of Cicero and that her license was issued by the Spiritualist Association of Illinois, Inc., which was incorporated under the laws of the State of Illinois, and defendant was one of their regular healers. The Spiritualist Church was organized under the laws of the State of Illinois and no doubt comes within the provisions of the statute hereinbefore quoted. Therefore, since defendant came within the class of persons exempted by the statute, we do not think a conviction should have been had."

Section 37 of the Medical Practice Act of Illinois provides:

> "Sec. 37. This Act shall not apply * * * to persons treating human ailments by prayer or spiritual means as an exercise or enjoyment of religious freedom."

The evidence both of the prosecuting witness and of the defendant showed that defendant only treated the prosecuting witness by prayer to God. The water given to the witness to drink was Holy water, pure water consecrated by prayer to God before arrival of the witness at defend-

ant's home and again during the drinking of the water by the witness. The giving of a cup of cold water is one of the religious rites of the church to which defendant belonged (Abst. 11-13). The authority for that sacrament or rite is the words of Jesus Christ:

> "And whosoever shall give to drink unto one of these little ones a cup of cold water only in the name of a disciple, verily I say unto you, he shall in no wise lose his reward." MATTHEW 10:42."

Breathing deeply and rapidly, both by the witness and the defendant, was done in order to help both of them better to contact God during the spiritual treatment, according to the defendant's belief (Abst. 11). It is God's Will, which does the healing, and not the divine healer's treatment, excepting as her prayers and faith in God help to invoke God's Will. This is the principle and doctrine which is the basis and motive for all prayer to God. Who can judge another person's religious beliefs? We should, under our law, recognize each person's right to religious freedom and tolerance.

Wherefore, your petitioner respectfully prays that a writ of certiorari should be granted.

Respectfully submitted,

ESTHER O. HANDZIK,
Petitioner herein, Pro se.